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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B5

[redacted]

OCT 0 4 2010

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching your decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a hospital and seeks to employ the beneficiary permanently in the United States as a registered nurse, seeking, as indicated on the I-140, Immigrant Petition for Alien Worker, a visa classification as a member of the professions holding an advanced degree or an alien of exceptional ability pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The petitioner has applied for the beneficiary under a blanket labor certification pursuant to 20 C.F.R. § 656.5, Schedule A, Group I. *See also* 20 C.F.R. § 656.15. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.5 with respect to which the Department of Labor (DOL) has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

Based on 8 C.F.R. §§ 204.5(a)(2) and (l)(3)(i) an applicant for a Schedule A position would file Form I-140, "accompanied by any required individual labor certification, application for Schedule A designation, or evidence that the alien's occupation qualifies as a shortage occupation within the Department of Labor's Labor Market Information Pilot Program."[1] The priority date of any petition filed for classification under section 203(b) of the Act "shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with [U.S. Citizenship and Immigration Services (USCIS)]." 8 C.F.R. § 204.5(d). Here, the petitioner filed the I-140 petition on May 18, 2006, which establishes the priority date. With the petition, the petitioner submitted an ETA Form 9089. On Part H of the ETA 9089, it states that the beneficiary must have an associate's degree and 24 months of training in the job offered. Part H-14 also specifies that the beneficiary must have a current U.S. RN license or be eligible to receive one or a CGFNS certificate.

As set forth on Part G of the ETA 9089, the proffered wage is $21.82 per hour. Part F of the ETA 9089 also indicates that the prevailing wage is $21.82 per hour.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).[2]

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[1] On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA 9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001); *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(AAO's *de novo* authority supported by federal courts).

At the outset, and in addition to the grounds cited by the director, the petition is not eligible for approval in the second preference visa classification because the ETA Form 9089 indicates that the petitioner would accept less than the foreign equivalent of an advanced degree as required by statute and regulation.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree."[3] *Id.*

Further, the regulation at 8 C.F.R. § 204.5(k)(4) provides in relevant part that:

> The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.

The alien labor certification, describes the terms and conditions of the job offered. As stated above, Part H, sets forth the educational, training, and experience requirements. As indicated above, Part H-4 states that the applicant must only have an associate's degree. Part H-5 states that 24 months of training in the job offered is also required. No other special skills or requirements are listed in Part H-14 except a current R.N. license in the U.S. or eligibility for one, or a CGFNS certificate.

As stated above, the regulation at 204.5(k)(2) and (k)(4) clearly require that the equivalency of a master's degree is a United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty. Further, that the regulations require that the labor certification filed with the employment-based petition for a second preference visa, must

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[3]Section 203(b)(2) of the Act also includes aliens "who because of their exceptional ability in the sciences, arts or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States." The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as a "degree of expertise significantly above that ordinarily encountered." In this case, the petitioner has not asserted that the beneficiary falls within this category.

correctly support that category. Here, the requirement of an associate's degree and 24 months of training is clearly less that the regulatory equivalent of a master's degree or a bachelor's degree followed by five years of progressive experience. Therefore, the petition must be denied on this basis, as well as for the reasons cited below.

Pursuant to the regulations set forth in Title 20 of the Code of Federal Regulations, the filing must include evidence of prearranged employment for the alien beneficiary. The employment is evidenced by the employer's completion of the job offer description on the application form and evidence that the employer has provided appropriate notice of filing the Application for Alien Employment Certification to the bargaining representative or to the employer's employees as set forth in 20 C.F.R. § 656.10(d). Also, according to 20 C.F.R. § 656.15(c)(2), aliens who will be permanently employed as professional nurses must have: (1) passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or (2) hold a full and unrestricted license to practice professional nursing in the [s]tate of intended employment; or (3) that the alien has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

On December 29, 2006, the director denied the petition because the petitioner failed to properly post the position in accordance with 20 C.F.R. §§ 656.20(g) and 656.10(d)(1). Specifically, the director determined that the notice of posting (posting notice #1), which stated a salary range of $20.75 to $33.73 per hour, failed to properly post the proffered wage as the range of wages stated on the notice began at a rate lower than the prevailing wage of $21.82 listed on the prevailing wage determination. The director also erroneously concluded that the notice of filing which ran from April 3, 2006 to April 14, 2006, failed to have been provided between 30 and 180 days prior to the filing of the application. As the application was filed on May 18, 2006, the provision of the notice of posting was timely.

The petitioner, through counsel, filed a motion to reopen on January 29, 2007. Counsel submits a copy of the beneficiary's CGFNS certificate, a copy of her Maryland R.N. license and a copy of a different notice of posting, which is described on counsel's transmittal letter as "correct posting notice with wage and posting dates replacing posting notice previously submitted due to clerical error." This notice of posting (posting notice #2) states that the salary is $21.82 -$33.73. It also states that it was posted from February 14, 2006 to February 28, 2006 and states the location of the posting on the notice as on the main bulletin board of the petitioner's business.

On April 26, 2007, the director determined that the grounds for denial had not been overcome and affirmed the denial of the petition. The director noted that the petitioner provided no explanation as to why the second notice was not submitted as initial evidence with the petition. He determined that it is not credible that the petitioner posted a notice of filing in February 2006 with a starting wage equal to the prevailing wage and then subsequently provides a second notice to its workers in April 2006 (posting notice #1) with a lower starting wage. The director concluded that counsel's explanation of a "clerical error" was insufficient to accept the notice of filing as reliable.

On May 29, 2007, the petitioner, through counsel, filed a second motion to reopen and states that the correct February 2006 posting dates notice submitted with the first motion to reopen is the correct

posting for the filing and that the submission of the earlier notice with the April posting dates had been submitted in error. She asserts that the correct salary range of pay stated on posting notice #2 is understandable because another notice submitted for a filing on behalf of another beneficiary in LIN-06-200-52743 shows that in March 2006, the petitioner was offering the wage at the same prevailing wage rate.

Therefore, counsel reasons that the petitioner would also have been offering the same correct prevailing wage in February 2006, a month earlier, as indicated on posting notice #2 in this case. Counsel states that she is submitting a copy of a notice of filing from [redacted] not as another substitution, but as illustrative of her argument that this prevailing wage was posted correctly during the same time period. The notice of posting that counsel states was taken from [redacted] shows a salary range from $21.82 to $33.73 and states posting dates from March 14, 2006 to April 3, 2006 with locations of posting added in typewritten form on the bottom of the notice.

The director determined that the grounds for denial had not been overcome and affirmed the denial of the petition. The director noted that no attestation or statement was provided from the petitioner explaining why they had attested to an incorrect notice of filing initially provided with the I-140, which had listed a salary range beginning at a lower amount than the prevailing wage.

Further, the director states that he reviewed the record in [redacted] order to verify the authenticity of the third sample notice provided by counsel in her second motion to reopen. The director notes that [redacted] contains two notices of filing. The first notice indicates that it was posted from March 23, 2006 to April 3, 2006 and contains a wage range of $20.75 to $33.73 per hour. The second notice of filing in that case, submitted in support of a motion to reopen, reflects that it was posted from March 14, 2006 to April 3, 2006 with a wage range of $20.75 to $33.73 per hour. Contrary to counsel's assertion, the director notes that neither of these notices matches the notice of posting submitted by counsel in support of the instant second motion to reopen. Instead, the director concludes that counsel's claimed sample notice claimed to be provided in LIN-06-200-52743 is itself an altered version of the second posting notice submitted in that case with a salary range that now reflects a low end equal to the prevailing wage of $21.82.

The director additionally notes that [redacted] was denied because it was determined that this petitioner had submitted a notice of filing in support of its motion to reopen, which was an altered version of the original notice that the petitioner had failed to establish that the notice had been posted for at least 10 business days as required by 20 C.F.R. § 656.10(d)(1)(ii).

On appeal, counsel simply states on the Form I-290B, Notice of Appeal or Motion that she will provide evidence that the notices were not altered or tampered with. Counsel offers on appeal that apparently both posting notice #1 and posting notice #2 were posted by the petitioner. Counsel states, however, that the petitioner completed a blank form submitted by counsel's office, as well as a correctly completed form that her office had supplied with the correct prevailing wage for this case. Additionally, she states that her office inadvertently submitted the incorrect notice to the director with the initial filing of the petition. Counsel maintains that the "correct" posting notice was

not altered other than to add the locations of posting and that even so, the regulations do not require that the notice of posting list a wage corresponding to the prevailing wage. She also asserts that the regulations do not require that the locations of posting must be printed on the notice at the time of posting. Further, counsel asserts that the offer of the wage to the alien must be at the prevailing wage, but the offer of wage is made on the I-140 petition, not on the notice of posting.

The record shows that the appeal is properly filed, timely and makes an allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). As noted in 20 C.F.R. § 656.15, the appropriate DHS office, and by reference, its sub-agency USCIS, is the authority where an employer must apply for a labor certification for Schedule A occupations. Contrary to counsel's suggestion on appeal, and as provided in 20 C.F.R. § 656.15, USCIS determines eligibility:

> (e) *Determination.* An Immigration Officer determines whether the employer and alien have met the applicable requirements of § 656.10 and of Schedule A (§ 656.5); reviews the application; and determines whether or not the alien is qualified for and intends to pursue the Schedule A occupation. The Schedule A determination of DHS is conclusive and final. The employer, therefore, may not appeal from any such determination under the review procedures at § 656.26.

One of the requirements to meet Schedule A eligibility is that the petitioner is required to post the position in accordance with 20 C.F.R. § 656.10(d), which provides:

> (1) In applications filed under § 656.15 (Schedule A), § 656.16 (Sheepherders), § 656.17 (Basic Process); § 656.18 (College and University Teachers), and § 656.21 (Supervised Recruitment), the employer must give notice of the filing of the Application for Permanent Employment Certification and be able to document that notice was provided, if requested by the certifying officer as follows:
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> . . .
>
> (ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice must be posted for at least 10 consecutive business days. The notice must be clearly visible and unobstructed while posted and must be posted in conspicuous places where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment . . . In addition, the employer must publish the notice in any and all in-house media, whether electronic or printed, in accordance with the normal

procedures used for the recruitment of similar positions in the employer's organization. The documentation requirement may be satisfied by providing a copy of the posted notice and stating where it was posted, and by providing copies of all the in-house media, whether electronic or print, that were used to distribute notice of the application in accordance with the procedures used for similar positions with the employer's organization.

. . .

(3) The notice of the filing of an Application for Permanent Employment Certification must:

(i) State the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity;
(ii) State any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor;
(iii) Provide the address of the appropriate Certifying Officer; and
(iv) Be provided between 30 and 180 days before filing the application.
. . .

(6) If an application is filed under the Schedule A procedures . . . the notice must contain a description of the job and rate of pay, and must meet the requirements of this section.

Additionally, section 212(a)(5)(A)(i) of the Act states the following:

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified . . . that

(I) there are not sufficient workers who are able, willing, qualified . . . and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

Fundamental to these provisions is the need to ensure that there are no qualified U.S. workers available for the position prior to filing. The required posting notice seeks to allow any person with

evidence related to the application to notify the appropriate DOL officer prior to petition filing. *See* the Immigration Act of 1990, Pub.L. No. 101-649, 122(b)(1), 1990 Stat. 358 (1990); *see also* Labor Certification Process for the Permanent Employment of Aliens in the United States and Implementation of the Immigration Act of 1990, 56 Fed. Reg. 32,244 (July 15, 1991).

As noted by the director, the posting notice initially submitted with the petition (posting notice #1) is deficient as the notice states the position's salary as "$20.75-33.73." The lower end of the range is below the petitioner's offered wage to the beneficiary of $21.82 per hour, and below the prevailing wage set by the SWA of $21.82 per hour, and thus, fails to accurately represent the rate of pay and meet the requirements of 20 C.F.R. § 656.10(d)(6).[4] Contrary to counsel's contention, we find that implicit in the requirement that the rate of pay and job are described on the notice of posting is that, at a minimum, the descriptions are accurate. We do not accept that a description of a rate of pay that is in the form of a salary range beginning at a level that is below the prevailing wage is accurate.[5] The notice of posting #1 is deficient in this regard. Further, although counsel is correct in asserting that the there is no requirement that the notice display the location of posting itself, the petitioner has not submitted any statement of location of posting in this proceeding except on posting notice #2. Therefore, without any way of determining if the requirements of 20 C.F.R. § 656.10(d)(ii) have been satisfied as to conspicuous places where U.S. workers can readily read any notices, the petition is not eligible for approval based on posting notice #1.

Further this notice of posting does not comply with 20 C.F.R. 656.10(d)(3)(iii) because it does not correctly advise of the certifying officer's address. At the time of filing, the job offer extended by the petitioner was in Maryland. According to DOL, the correct address[6] for the certifying officer that the petitioner should have used on the notice of posting was:

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[4]It is noted that DOL's FAQS with respect to advertising the job offer state that a wage range may be used as long as the bottom of the range is not less than the prevailing wage rate. *See* http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm. (Accessed September 2, 2010).

[5]Moreover, it implies that the employer's attestation on page 9 of the ETA Form 9089 is not reliable. The notice providing that the wage range beginning at an amount less than the prevailing wage fails to accurately reflect the employer's promise stated on page 9 of the ETA Form 9089 that the "offered wage equals or exceeds the prevailing wage and that the I will pay at least the prevailing wage." *See also* 20 C.F.R. § 656.10(c). Further, in discussing the use of a salary wage range, DOL's comments on the final rule enacting the PERM process in 2004, indicate that the offered wage range set forth on the ETA Form 9089 was used to clarify that "employers can offer a wage range as well as a specific rate as long as the bottom of the wage range (reflected on the "From" box) is not below the prevailing wage." 69 Fed. Reg. 77326, 77333 (Dec. 27, 2004). Also, referring to page 114 of *Technical Assistance Guide No. 656 Labor Certifications* (TAG), DOL states that "Employers can use a wage range in the required notice. It is longstanding DOL policy that the employer may offer a wage range as long as the bottom of the range is no less than the prevailing rate." 69 Fed. Reg. 77326, 77338 (Dec. 27, 2004).

[6]*See* DOL FAQS at http://www.foreignlaborcert.doleta.gov./pdf/perm_faqs_3-3-05.pdf (Accessed September 2, 2010).

United States Department of Labor
Employment and Training Administration
Atlanta National Processing Center
Harris Tower
233 Peachtree Street, N.E., Ste. 410
Atlanta, Georgia 30303

Accordingly, posting notice #1 and the concurrent omission of accompanying documentation that should have been submitted with the petition was deficient and not in accordance with 20 C.F.R. § 656.10(d)(1)(ii). Additionally, as noted herein, the address of the DOL certifying officer on posting notice #1 was incorrect. *See* 20 C.F.R. § 656.10(d)(3)(iii). Further, the wage range stated on the notice did not accurately reflect the position's rate of pay. The lower range did not meet the prevailing wage. *See* 20 C.F.R. § 656.10(d)(6). Finally, the record does not include any evidence from the petitioner whether it had posted this notice of filing using in-house media or whether such media existed. As such, we cannot determine if the petitioner had complied with 20 C.F.R. § 656.10(d)(1)(ii). Additionally, it is noted that the requirements of the position as stated on the notice represented that an R.N. license was required. This inaccurately describes the job opportunity's requirements and is not in compliance with 20 C.F.R. § 656.10(d)(6) and is additionally inconsistent with the requirements of Part H-14 of the ETA Form 9089. Part H-14 indicates that the requirements of the position is a current R.N. license in the U.S. *or be eligible to receive one or CGFNS certificate.* (Emphasis added).

With respect to posting notice #2, submitted with the petitioner's motion to reopen, we concur with the director that this document is not reliable. As noted by the director, the petitioner has provided no persuasive explanation as to why the correct notice was not provided with the petition. Further, the petitioner failed to address why it attested to the first notice of posting(s) purportedly for this position that lists a salary range beginning at a level lower than the prevailing wage posted from April 3rd to April 14th, then subsequently claims in the motion to reopen to have discovered that it actually posted a "correct" notice of posting (posting #2) in February 2006, a month and a half earlier. As discussed above, the director's observations of counsel's attempt to explain the reasonableness of such action by submitting a notice of posting claimed to be from another case at around the same time period, was clearly not supported by the copy of the notice of posting submitted, which appeared to be an altered, "whited out" version of another notice of posting.

Further, with respect to this and the prior posting, the postings all contain the same misspelling of ["alient"] and appear to bear the same cursive handwriting, except where dates or wage rates are presented. For example, the notice of posting #2 in this case and the notice of posting submitted on appeal in [redacted] appear to be copies of each other except for the changes in dates and salaries. It raises questions of reliability and potential alteration despite counsel's claim on appeal, that except for locations of posting, no alterations have been made. However, this comparison does not indicate an addition of locations of posting, just changes to the dates and salaries stated. Moreover, counsel does not indicate which posting notices she references in relation to the claim that only the posting location has been changed. Further, counsel's attempt to explain how the petitioner is using both its own posting notices and ones supplied by counsel suggests that the petitioner's

procedures are flawed and unreliable. Counsel's speculation as to the petitioner's practices do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). For this reason, this notice will not be considered probative of the petitioner's proper posting of the notice of job opportunity in this case. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

Further, and similar to posting notice #1, posting notice #2 contains similar deficiencies in the notice and omissions of documentation. The notice advises the certifying officer's address at the wrong location and accompanying documentation lacks any statement from the petitioner about the existence of in-house media and notice of posting in any in-house media. Further, the notice also misrepresents the job's description in stating that only an R.N. license is required, which is inconsistent with the job requirements as described on Part H-14 of the ETA Form 9089. Notice of posting notice #2 is also not in compliance with 20 C.F.R. § 656.10(d) and does not support the petition's approval.

Also beyond the decision of the director, it is noted that the petitioner failed to establish that the beneficiary has 24 months of training in the job offered as set forth on Part H-5. The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
>
> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
> >
> > (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The requirements of education and training and experience are separate and distinct.[7] The record contains a copy of the beneficiary's Associate of Science degree from Montgomery College that was provided with her adjustment of status application. However, the petitioner has not submitted evidence of 24 months of training. No other third party verification of the beneficiary's training credentials is contained in the record. Therefore, the petitioner has not established that the beneficiary acquired the required training as of the priority date.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[7] The regulation at 8 C.F.R. § 204.5(l)(2) provides that relevant post-secondary education may be considered as training.